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**Filed** : **March 23, 2004**

## **REMARKS**

Prior to entry of the foregoing Amendment, Claims 23 through 61 were pending in the present application. Claims 23, 32, and 46 have been amended herein, and Claim 25 has been cancelled. Claims 23, 24, and 26 through 61 are thus pending in the present application.

### Double Patenting Rejection

The Examiner rejected Claims 23-25, 29, 32, 36, 37, and 56-61 under the judicially created doctrine of obviousness-type double patenting as being obvious over Claims 1, 2, 5, 16, 30, 33, 34, 36, 37, and 40-42 of co-pending Application No. 11/076,448. Applicant encloses herewith a terminal disclaimer to overcome this rejection. Applicant respectfully requests that this rejection be withdrawn.

### Rejections Under 35 U.S.C. § 102

Claims 23, 24, 27-30, 32-37, 39, 41-43, 45-47, 49, 50, and 52-61 were rejected in the Office Action under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,482,227 issued to Solovay. Also, Claims 26, 31, 38, 40, 44, 48 and 51 were rejected in the Office Action under 35 U.S.C. § 103(a) as obvious in view of Solovay and one of Chobotov (U.S. Publication No. 2003/0125797 issued to Chobotov et al.), Sheiban (U.S. Patent No. 5,226,889), or Imran et al. (U.S. Patent No. 6,241,744).

Applicant does not agree with these rejections and believes that the prior art does not anticipate or render obvious the previously presented claims. For example, as discussed below, there is no suggestion in Solovay that the gasket 30 is capable of being placed in a branch vessel. Nor is there any indication of how a stent 40 or stent grafts 80(a) and 80(b) could bend and rotate relative to the gasket 30.

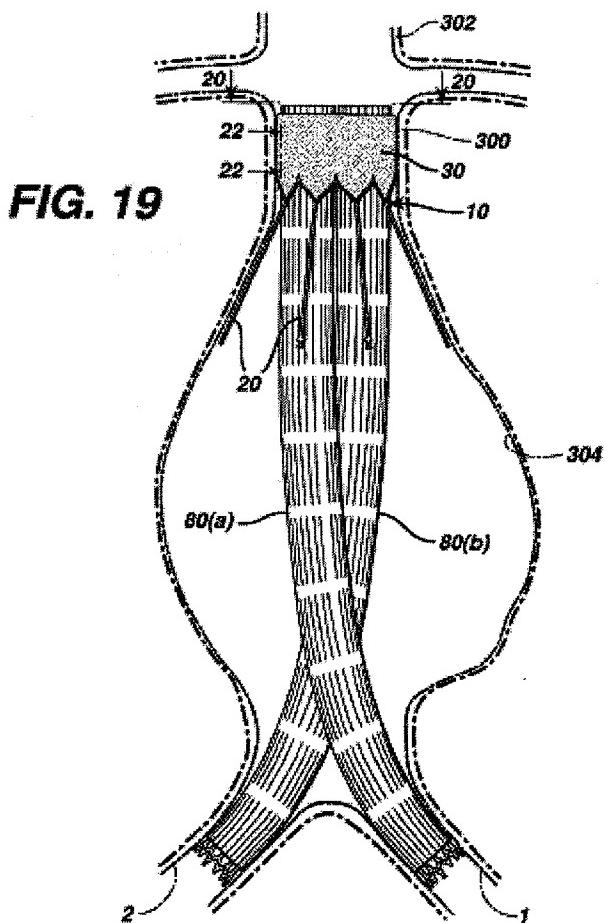
However, to expedite prosecution, the limitations of Claim 25, which was not rejected based upon Solovay, alone or in combination with any other references, have been incorporated into Claim 23. Thus, amended Claim 23 is allowable over Solovay for the same reasons that Claim 25 was deemed allowable. Claims 24, 26-31, and 43-45 depend from amended Claim 23 and thus also are allowable for at least the same reasons as amended Claim 23.

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Independent Claims 32 and 46 have been amended to include the limitation previously recited in Claim 25 and therefore further distinguish the applied references. Applicant respectfully requests that the rejection of Claims 32 and 46 be withdrawn. Claims 33-42 depend from Claim 32 and Claims 47-55 depend from Claim 46. Thus, Claims 33-42 and 47-55 are allowable for at least the same reasons that Claims 32 and 46 are allowable. Applicant respectfully requests that Claims 32-42 and 46-55 be allowed.

Method Claims 56-61

The rejection of Claims 56-61, which are drawn to methods, as being anticipated by Solovay is traversed. For example, the disclosure of Solovay referred to by the Examiner does not disclose all of the limitations of these method claims. The Examiner refers repeated to Solovay Figure 19, reproduced below.



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The structure considered by the Examiner to relate to a scaffold is referred to by Solovay as a gasket 30. Figure 19 shows that the gasket 30 is positioned in a main vessel, i.e., the aorta and not in a branch vessel as set forth in the methods recited in previously pending Claims 56 and 57. More particularly, Claim 56 recites a method for deploying a prosthesis across an Os opening from a main lumen to a branch lumen, the main body lumen having a main vessel wall with a portion of the main vessel wall opposing the os, said method comprising:

positioning a first prosthesis so that a scaffold lies within the branch lumen and at least two anchors extend into the main lumen; radially expanding the scaffold to implant said scaffold in the branch lumen; circumferentially deforming the anchors such that at least one of said anchors extends along the main vessel wall a sufficient distance to reach the portion of the main vessel wall opposing the os.

For at the reasons set forth above, Solovay does not anticipate the method of Claim 56.

Similarly, Claim 57 recites a method of positioning a prosthesis across the ostium opening between a main vessel and a branch vessel, the main vessel extending in both an upstream direction and a downstream direction from the ostium, comprising the steps of:

providing a radially expandable scaffold, having a first end and a second end and at least three anchors extending from the first end; and

positioning the prosthesis such that the scaffold is within the branch vessel and the anchors extend along the wall of the main vessel and all point in an upstream direction.

For at least the reasons set forth above, Solovay does not anticipate the method of Claim 57. Nor does Solovay anticipate the methods of Claims 58-61 which depend from Claim 57 and recite additional limitations not disclosed in Solovay.

In view of the foregoing, Applicants respectfully request that the rejections of Claims 23, 24, and 26-61 be withdrawn. Claim 25 has been cancelled.

### **CONCLUSION**

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowance is most earnestly solicited.

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments

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are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Andrew M. Douglas at (949) 721-7623 to resolve such issue(s) promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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